IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 7 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NAVINCHANDRA PARSHOTAM BIN VAGHJIBHAI PATEL - Appellant(s)
Versus
SHANKARBHAI ZAVERBHAI PATEL & 1 - Defendant(s)

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Appearance :
MR LR PATHAN for Appellant(s) : 1,
None for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 27/09/2006

ORAL JUDGMENT

1. Shri L.R.Pathan, learned counsel for the appellant is heard on the question of admission.

2. One Gosai Udaygiri Babargiri somewhere in the year 1949 executed a mortgage deed in favour of

Kishorbhai Naranbhai, the mortgagee was put in possession of the property. On 11th July, 1985, Gosai Udaygiri Babargiri redeemed the property and immediately filed a Civil Suit submitting inter-alia that defendant Shankarbhai Zaverbhai Patel and his son Ranchhodbhai were inducted as tenants in the property by the mortgagee, therefore, after redemption, the tenants inducted by the mortgagee would have no right to continue in possession and under the circumstances, they deserve to be evicted.

3. The defendants appeared before the court and inter-alia submitted that they were inducted as tenants by Gosai Udaygiri and not by the mortgagee.

4. During the pendency of the suit, the plaintiff purchased the property from Gosai Udaygiri Babargiri and made an application for substitution which was accordingly allowed, the present appellant Navinchandra Parshottambhai Bin Vaghjibhai Patel, is purchaser of the property from the original plaintiff.

5. After recording the evidence of the parties and

hearing them, the trial Court dismissed the suit and as the appeal proved futile, the plaintiff is before this Court.

6. Mr. Pathan, learned counsel for the appellant submits that the Courts below have ignored important aspects of the matter especially the mortgage deed which does not contain the fact that the defendants were occupying the property as tenants and the recital made in the redemption deed that the defendants were inducted as tenants by the mortgagee.

7. According to him, if these two documents are taken in their true perspective, the inevitable conclusion would be that the defendants were inducted as tenants by the mortgagee.

8. True it is that the mortgage deed does not make a mention that the property was already occupied by tenants and the redemption deed does make a mention that the defendants were inducted as tenants by the mortgagee, but unfortunately the recital made in the redemption deed has not been proved by examining the mortgagee, who had made such a statement in the document. Between

the mortgagor and mortgagee the statement contained in the mortgage deed and the redemption deed would be binding, but any statement made against the interest of the third party would not bind the third party unless the recital is proved by examining the person who has made such a statement.

9. In the present case, unfortunately, the mortgagee, who made such a statement in the redemption deed has not been examined. In absence of the proof of the fact that the defendants were inducted as tenants by the mortgagee, a relief in favour of the plaintiff cannot be granted. The Courts below were justified in dismissing the suit. However, it would be open for the plaintiff to approach the appropriate forum seeking eviction of the defendants on the grounds which are available to them under the law.

10. The appeal is dismissed. No costs. Let a decree be framed accordingly.

(**R.S. GARG, J.**)

*mithabhai